

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 537 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GULAB MALA

Versus

HEIRS OF HIRAJI DEVAJI

Appearance:

MR RAVI R TRIPATHI for Petitioner
(MR GN DESAI) for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 08/03/99

ORAL JUDGEMENT

This is tenant's revision under Section 29(2) of the Bombay Rent Control Act, 1947.

2. The brief facts are that the landlord alleged that the defendant was tenant of open land and a hut on Rs.5/- per month. The suit for eviction was filed on two counts viz. non-payment of rent exceeding six months within a month of service of notice by the tenant and the second was that the tenant had sub-let the suit

accommodation illegally.

3. The Trial Court did not pass decree for eviction on the ground that sub-letting was not proved and that the tenant was entitled to protection under Section 12(3)(b) of the Bombay Rent Act. The Trial Court however decreed the suit for recovery of arrears of rent.

4. An appeal was preferred by the revisionist. The Appellate Court found that Section 12(3)(a) of the Bombay Rent Act is applicable in as much as the revisionist fell in arrears of rent exceeding six months and he failed to pay the same within a month of service of notice of demand. It also found that the dispute of standard rent was not raised within a month of service of notice of demand. The Appellate Court agreed with the Trial Court that the plea of subletting raised by the landlord was not established. With this modified findings, the suit was decreed by the Appellate Court for eviction of the revisionist, hence this revision.

5. Arguments of the Learned Counsel for the parties were fully heard. At the end of the arguments of the respondents Counsel Shri R.R.Tripathi, Learned Counsel for the revisionist under the instructions of the revisionist, who is said to be present in the Court stated, that he wants to withdraw the revision and prays for time to vacate the land with further prayer that the revisionist may be permitted to remove the super structure and material of the super structure without causing any damage to the adjoining walls of the adjoining portion where the super structure has been raised. Learned Counsel for the respondent has agreed that one year's time may be granted to the revisionist to vacate the land and take away the super structure as suggested. In view of this agreed statement at the close of arguments, Learned Counsel for the revisionist is permitted to withdraw this revision.

6. In the result the revision is dismissed as withdrawn with no order as to costs. It is directed that that the revisionist shall hand over vacant possession of the land in dispute on or before 31.3.2000 and shall also remove the super structure and shall be at liberty to take away the material of the super structure without causing any damage to the adjoining walls where the super structure has been raised. During this period, the revisionist shall not sublet, transfer or assign either the super structure or the land to anyone else and shall, also pay the decretal amount together with costs of the suit and mesne profits upto date less the amount already

paid or deposited in the Court under this head within three weeks. The revisionist shall further continue to pay mesne profits at the rate awarded by the Courts below on 5th day of each calendar month till 31.3.2000. The usual undertaking may be filed in terms of the aforesaid order within 3 weeks from today.

jitu